

SUIT AGAINST THE MINNESOTA AND NORTHWESTERN
RAILROAD COMPANY.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

*Documents communicating information in reference to a suit instituted
against the Minnesota and Northwestern Railroad Company.*

JANUARY 16, 1855.—Referred to the Committee on the Judiciary, and ordered to be printed.

To the House of Representatives of the United States:

I transmit herewith a report of the Attorney General, with the accompanying documents, communicating the information required by the following resolution of the House of Representatives of the 28th ultimo:

“*Resolved*, That the President of the United States be requested to communicate to this House any information possessed by him regarding a suit instituted in the Territory of Minnesota, by or in the name of the United States, against the Minnesota and Northwestern Railroad Company.”

FRANKLIN PIERCE.

WASHINGTON, *January 10*, 1855.

ATTORNEY GENERAL'S OFFICE,
January 1, 1855.

SIR: I have the honor, in compliance with your direction of the 30th ult., to submit the present report in answer to a resolution of the House of Representatives of the 28th ult., requesting you to communicate to the House any information possessed by you “regarding a suit instituted in the Territory of Minnesota, by or in the name of the United States, against the Minnesota and Northwestern Railroad Company.”

Annexed is a copy of the record in that case, by which it appears that it is an action of trespass, instituted in the Territory of Minne-

sota by the attorney of the United States for that Territory, decided there in favor of the defendants, and thereupon appealed by him to the Supreme Court of the United States.

This copy has been obtained from the files of the Supreme Court, in which the case was docketed on the 21st ult. by the attorney of the appellees.

No knowledge, official or unofficial, of the existence of this action, was possessed by the Solicitor of the Treasury or myself, or by the Secretary of the Interior, until the above-mentioned entry of record in the Supreme Court, at or about which time statements concerning it came to hand in public journals of the Territory of Minnesota.

Letters of the Secretary of the Interior and of the Solicitor, on the subject, are annexed.

During the two or three days in which a copy of the record has been in my possession, it would, under any circumstances, have been impracticable for me to become prepared to enter into detailed exposition as to all the points of a voluminous transcript thus unexpectedly and abruptly thrown upon me. In addition to which, there are particular embarrassments affecting this case, in consequence of the magnitude of the interests, public and private, involved.

The question at issue on the pleadings in it, is the validity of the act of Congress of August 4, 1854, which purported to repeal the act of June 29, 1854, making a grant of public land to the Territory of Minnesota in aid of the construction of a railroad traversing that Territory, which grant the defendants in the suit pretend has effectually vested in them, notwithstanding the above-mentioned act of repeal, or, as they claim, has, by force of the original act, passed from the United States.

If, however, the case were wholly free from these or any other special difficulties, the House of Representatives would not, it is presumed, expect any discussion here of the technical merits of a judicial question pending before the Supreme Court.

But the case has relations to the law-officers of the government of the United States, which, as it seems to me, make it incumbent on me to lay before you in form certain facts heretofore communicated verbally, in order that, if you see fit, they may be communicated to the House of Representatives.

The act establishing the office of the Solicitor of the Treasury (4 Stat. at Large, p. 414) contains the following among other provisions:

"SEC. 5. That the said Solicitor shall have power to instruct the district attorneys, marshals, and clerks of the circuit and district courts of the United States, in all matters and proceedings appertaining to suits in which the United States is a party, or interested, and cause them, or either of them, to report to him from time to time any information he may require in relation to the same.

"SEC. 7. That it shall be the duty of the Solicitor of the Treasury, with the approbation of the Secretary of the Treasury, to establish such rules and regulations, not inconsistent with law, for the observance of collectors, district attorneys, and marshals, respecting suits in which the United States are parties, as may be deemed necessary

for the just responsibility of those officers, and the prompt collection of all revenues and debts due and accruing to the United States.

"SEC. 10. That it shall be the duty of the Attorney General of the United States, at the request of said Solicitor, to advise with and direct the said Solicitor as to the manner of conducting the suits, proceedings, and prosecutions aforesaid."

In conformity with the provisions of this act of Congress, standing as well as special instructions to district attorneys have, from time to time, issued from the office of the Solicitor.

The instructions now in force contain the following, among other articles:

"1. On taking the oath of office, district attorneys will immediately advise the Solicitor of the Treasury to that effect. They will at the earliest practicable period obtain from their respective predecessors in office, the books, papers, and other property of the United States in their hands.

"4. No district attorney will commence or defend a suit or proceeding in court, in the name or for the benefit of the United States, without instructions from the Solicitor's office, or by direction from some person or court authorized by law so to direct; except in extraordinary cases, where the remedy or lien of the United States would, in the opinion of the district attorney, be lost or endangered by delay; and in such case he will immediately communicate to the Solicitor of the Treasury what he has done, with his reasons therefor.

"5. Whenever a district attorney shall receive from a public officer, or shall, in any other manner, become possessed of information which shall lead him to believe that a trespass upon the property of the United States, or an infraction of their revenue or other laws, has been committed, he will immediately report such information to the Solicitor, with an opinion as to the propriety of prosecuting the offender; or if, in his opinion, the remedy of the United States would be lost or endangered by delay, he will, in case he shall consider it proper to do so, immediately commence a suit and report the same to the Solicitor, with his reasons for such proceeding.

"6. On the receipt of papers directing or on which to commence suit, the district attorney will closely examine and see if there is any defect in them, or explanation wanted; and if so, he will immediately report the same to the Solicitor, or other person from whom received, with such suggestion as shall seem to him proper. If, before the commencement, or during the progress of a cause, questions shall arise in the mind of the district attorney, in relation to which it may, in his opinion, be desirable that he should take counsel, he will state such questions to the Solicitor, with his views, and the authorities upon which he relies, or which occasion his doubts.

"7. The commencement of all suits must be reported by district attorneys immediately after process shall be issued, and, at the end of every term of the district and circuit courts, they will make a general report to the office of the Solicitor, containing a list of all suits commenced by them since the close of the last preceding term of such court, with a full statement of the cause of the action and all the

proceedings therein; also, containing a statement of all proceedings since the close of the last preceding term in causes previously commenced, so as to furnish to the Solicitor a full history of what has been done in all causes since the previous term, including any trial, verdict, decision or judgment, the issuing of any execution, and the time when issued.

"11. All records of cases in error, or on appeal to the Supreme Court, together with the points of both parties, the brief of the district attorney, the authorities cited by the opposing counsel, and the opinion of the judge, when it can be obtained, whether intended for the Attorney General, the clerk of the Supreme Court, or the Solicitor, must be enclosed to the Solicitor, where the proper disposition of the papers will be made. The district attorney will examine and see that the papers in cases in error and on appeal are correct copies, and are in due form of law."

Indeed, the whole series of the regulations respecting district attorneys, a copy of which is hereto annexed, assume and require that the Solicitor shall be kept informed of the institution and progress of any suit by them, in which the United States are either plaintiff or defendant, in order that the government itself may judge of the propriety of bringing or defending the same, and on that point, or in the manner of conducting the case, may give suitable instructions to the local attorney of the United States.

The regulation as to the transmission of the record, brief, and others papers, is important: first, because of the aid which those papers afford to the Attorney General in preparing the case for final argument; and, secondly, because, according to the rules of court, an appellant has in some cases thirty days, and in others sixty days, to enter his appeal; during which time he may examine the transcript to judge of its completeness, and to have it corrected if necessary, so that the case may be duly presented to the Supreme Court.

According to these regulations, the attorneys of the United States are not to commence suits without instructions to that effect, except in extraordinary cases provided for, of which the present is not one; for there was no remedy or lien of the United States in peril.

The attorneys should have instructions to sue, from the Solicitor, or be directed to do so by "some person or court authorized by law so to direct." There is no law authorizing any court to give direction for the institution of any such action of trespass. I am not aware of any "person" so authorized except yourself, some head of department, or the Solicitor. No such direction has been given in the case by any of these competent authorities of the government.

Without such regulations the duty of the district attorney of the United States was the same. He has no more right than any other attorney to commence suits in the name of his client, without either general authority or special instructions.

If, however, misjudging as to the question of exigency, a district attorney commences a suit in the name of the government, it is then his duty, by the regulations, to communicate with the Solicitor immediately, in order that the President, or proper head of department, may decide whether the suit shall be prosecuted. The same duty

would be incumbent on the attorney by the general rules of law, independently of the regulations.

Finally, it is in like manner the duty of the attorney, as well by the regulations as by the general rules of practice, to transmit the transcript, on appeal, either to the Solicitor, or to the Attorney General, having charge, by law, of all business of the United States in the Supreme Court.

Beyond the general regulation as to all suits, there is the special one applicable to trespasses upon the property of the United States, which provides that the district attorney, on becoming possessed of any information leading him to believe that such trespass has been committed, "will immediately report the same to the Solicitor; * * or if, in his opinion, the remedy of the United States would be lost or endangered by delay, he will, in case he shall consider it proper to do so, immediately commence suit, and report the same to the Solicitor."

Under these regulations there is no possible room to doubt that, in commencing this suit without instructions, the district attorney violated his duty; because no remedy of the United States could be "lost or endangered by delay" in writing to the Solicitor. In so far as concerns the trespass, the remedy could have waited not days or weeks only for consulting the Solicitor, but months, without particular prejudice to the United States.

As to the rest, no *official* information of the trespass complained of in the present suit, or of the pendency of the suit itself, or of the judgment below and appeal, nor any transcript of the record or other appeal papers, having to this day been received by the Solicitor, (or by any other competent authority of the government,) it remains only to inquire whether, though not received, they have been actually transmitted by the district attorney.

In a newspaper published in the Territory of Minnesota, called the St. Paul Democrat, received by the Secretary of the Interior, and by him communicated to me on the 27th ultimo, is a printed communication to the public, under date of December 4, 1854, signed "John B. Brisbin," a copy of which is annexed.

In this document, which is apparently authentic, Mr. Brisbin speaks of the present suit, while pending in the Territory, as in his charge, and makes the following statement:

"The action against the Minnesota and Northwestern Railroad Company was at issue on the 23d day of October, 1854. On the 24th of October, 1854, obediently to instructions, I communicated to the department notice of the pendency of the action, accompanied with a statement of the objects of the suit, and the precise character of the issues raised. Nearly two months have since intervened, and the department has in nowise signified its disapproval of the course pursued by the district attorney."

It does not appear from this statement what precise legal relation Mr. Brisbin had to this suit; but if, as it would seem, he acted for the district attorney, then what he says is important, because he does not pretend that the district attorney had any authority to sue, nor that notice of the suit was given "immediately" upon its being com-

menced, but only *after issue joined*. The declaration is material in another point, because it admits knowledge of the standing instructions to attorneys. "Obediently to instructions," he says, he "communicated to the department notice of the pendency of the action." It does not appear from this *how* he "communicated," nor to what "department;" but as he professes to have done this "obediently to instructions," of course, by "department" he must mean the Solicitor. If, however, it was addressed erroneously to some other officer of the government, that is quite immaterial, so far as regards the question of the district attorney's duty; for, after waiting a reasonable time for instructions, he should have assumed the miscarriage of the notice, and repeated it. Beyond all which is the graver consideration, that to have commenced the action without authority,—to have given notice of its pendency to the government only when it was too late for the Solicitor of himself, or the Attorney General through him, to instruct, advise, or direct as to the pleadings and trial,—to have given no notice of either of the subsequent judgments against the United States,—and then, finally, not to send the appeal-papers to the Solicitor, would constitute a series of acts in which the fact of the one unseasonable notice would augment the weight of inference against the district attorney.

In the same journal, of the 13th of December, is a printed public statement purporting to be signed by the district attorney himself, (Mr. John E. Warren,) in which, while arguing in justification of the *motives* of his conduct, he speaks throughout of the suit as instituted and carried on by himself, and assumes responsibility for the acts of Mr. Brisbin in the premises, without anywhere pretending authority or instructions from the government. To this effect is the transcript of the record, which shows that notice to the company of action brought in the name of the United States is signed "John E. Warren, attorney for plaintiff." The plaint or declaration has the same signature; and the replication is subscribed "John E. Warren, U. S. district attorney." A copy of Mr. Warren's communication is annexed.

It is observable, moreover, that Mr. Warren, writing on the 13th of December,—that is, several days after the case, having passed through all the courts of the Territory, had been appealed to the Supreme Court,—gives not the least intimation of any report made by him to the government, which is left to learn the very pendency of the suit at the last hour from the adverse party, or the public journals of Minnesota.

So that the case is plainly this: The district attorney has brought an action of trespass, in the name of the United States, not for the purpose of redressing a trespass on the public domain, but of trying the title of the United States to the tract of land originally ceded to the Territory of Minnesota to aid in the construction of a railroad.

The interest of the United States, of the Territory of Minnesota, or of settlers on the public lands, might require judicial investigation of this matter; and in one form or another it would be not unlikely to find its way, sooner or later, to the Supreme Court. But the question of the propriety of an action in the name of the United

States for such purposes, as also that of the pleadings and issues in the case, was one for the Executive or the law officers of the government here to determine; and in presuming to take the question out of their hands, to act independently of them, and to make up issues of appeal, which in their judgment may be partial, insufficient, or otherwise not calculated to further the ends of justice, the district attorney disobeyed standing instructions and disregarded his official obligations.

Upon these facts and considerations, as made known to you in complete detail from day to day by the Secretary of the Interior or by myself, you have already ordered the removal of Mr. Warren, for the reasons stated in the letter written under your direction, of which a copy is annexed.

In the absence, at present, of any satisfactory means of judging the motives of Mr. Warren, you have decided, as the letter of dismission indicates, to suspend all conclusion in the premises, except on the point of his disregard of duty in commencing and prosecuting this suit without asking instructions from, or making due report to, the Solicitor.

Whatever may prove to have been the motives or inducements of these proceedings, they cannot ultimately, it is believed, have the effect of prejudicing the legal rights of the United States.

It might be the possible subject of misconstruction to omit to state, that certain public journals in Minnesota charge that the Attorney General of the United States has, from personal interest, directed or instigated the proceedings in that Territory.

As to this, all the facts of the case, as they are succinctly narrated in this report and the documents annexed, are, I trust, a satisfactory answer to any such imputation.

On the other hand, suggestion is made of private interests of his adverse to those of the Railroad Company. The latter imputation, of course, excludes and confutes the former. As to this, it is hardly needful for me to say, that no private interest of mine exists, or can exist, to prevent my discharging the office of Attorney General, in the conduct of this cause in the Supreme Court, with all due consideration towards individuals, while maintaining, as my primary duty, the rights and the interests of the United States.

I am, very respectfully,

C. CUSHING.

The PRESIDENT.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Chief Justice and associate justices of the Supreme Court of the United States for the Territory of Minnesota, greeting:

Because, in the record and proceedings, as also in the rendition of judgment in a plea which is in the said Supreme Court, before you, between the United States of America and the Minnesota and North-

western Railroad Company, a manifest error hath happened, to the great damage of the said United States of America, as by their said complaint appears; and it being fit that the errors, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the fourth Monday of December, instant, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this ninth day of December, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the United States the seventy-eighth.

[L. S.]

GEO. W. PRESCOTT.

Clerk Supreme Court U. S. for the Territory of Minnesota.

TERRITORY OF MINNESOTA, ss:

I hereby allow the within and foregoing writ of error.

WILLIAM H. WELCH.

Chief Justice Supreme Court U. S. for Territory of Minnesota.

DECEMBER 9, 1854.

To the Chief Justice and associate justices of the United States of
America:

The return to this writ appears by the schedule hereto annexed.

The answer of the justices of the Supreme Court of the United States, for the Territory of Minnesota, within mentioned.

[L. S.]

GEORGE W. PRESCOTT.

Clerk of the Supreme Court of Minnesota Territory.

Pleas in the Supreme Court of the United States for the Territory of Minnesota, held at the Capitol in the city of St. Paul, before the justices of the same court, on the first Wednesday, being the 6th day of December, in the year 1854, to wit :

The UNITED STATES OF AMERICA, appellants,
against

against

The MINNESOTA AND NORTHWESTERN RAILROAD
COMPANY, appellees.

COMPANY, appellees.

This day came the parties by their attorneys, and thereupon this cause came on to be heard upon the transcript of the judgment, and other papers, pleadings, and proceedings, brought by appeal to this court from the district court of Goodhue county, to wit:

Territory of Minnesota—District court, first district, Goodhue county.

The UNITED STATES OF AMERICA	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD	
COMPANY.	

To the above-named defendants, the Minnesota and Northwestern Railroad Company :

You are hereby summoned and required to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said complaint on the subscriber, at his office, in the city of St. Paul, and county of Ramsey, within twenty days after the service hereof upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will have his damages assessed by a jury, or the amount he is entitled to recover, ascertained by the court, or under its direction, and take judgment for the amount so assessed or ascertained.

Dated St. Paul, October 23, 1854.

JOHN E. WARREN,
Attorney for Plaintiff.

Territory of Minnesota—District court, first district, county of Goodhue.

The UNITED STATES OF AMERICA	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD	
COMPANY.	

The complaint of the United States of America, the above-named plaintiff, respectfully shows to this court that the above-named defendants, the Minnesota and Northwestern Railroad Company, are a body corporate, incorporated by, under, and by virtue of, an act passed by the legislature of the Territory of Minnesota, and capable in law of being sued and impleaded in this action; that said defendants on the 12th day of October, in the year 1854, and at divers other times between that day and the day of the commencement of this action, with force and arms, broke and entered a certain close of the plaintiff, being the tract or parcel of land known as section number three, of township number one hundred and twelve, north, situate and being in the county of Goodhue, and Territory aforesaid, and then and there felled, cut down, prostrated, and killed the trees, to wit: five hundred oaks and five hundred other trees, upon the said tract or parcel of land, and within the said close then growing and being, and took and carried away the same, and other wrongs, then and there did, to the damage of the plaintiff of ten hundred and ten dollars.

Wherefore, the plaintiff demands that the defendants may be adjudged to pay the plaintiff damages to the sum of ten hundred and ten dollars, with the costs of this action.

JOHN E. WARREN,
Attorney for Plaintiff.

The within named defendants hereby accept due service of the within summons and complaint.

JOHN M. BARBOUR,

Agent of the Minnesota & Northwestern Railroad Company.

OCTOBER 23, 1854.

Territory of Minnesota—District court, first district, Goodhue county.

The UNITED STATES OF AMERICA	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.	

The answer of the above-named defendants to the complaint of the plaintiff in this action, respectfully shows to this court: That before the commission of the acts complained of in said complaint, or either of them, to wit, on the fourth day of March, in the year 1854, an act was passed by the legislature of the Territory of Minnesota, and approved by the governor thereof, in the following words and figures, that is to say:

AN ACT to incorporate the Minnesota and Northwestern Railroad Company.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Minnesota*, That Robert Schuyler, William P. Burrall, George L. Schuyler, Morris Ketchum, Edward Bement, R. B. Mason, and George W. Billings, of the city of New York; Erastus Corning, of the city of Albany; John M. Forbes, Curtis B. Raymond, and John Gardner, of the city of Boston; W. B. S. Moore, of the city of Bangor, Maine; and Frederick S. Jesup, of the city of Dubuque, Iowa; and Franklin Steele, Charles W. Borup, Orange Walker, Alexander Wilkin, Willis A. Gorman, Alexander Ramsey, James Stinson, and S. Travis Rosser, of the Territory of Minnesota, and all such persons as shall hereafter become stockholders in the company hereby incorporated, shall be a body politic and corporate, by the name and style of the "Minnesota and Northwestern Railroad Company," and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and equity, in all courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal, and alter and renew the same at pleasure; and by their said corporate name and style shall be capable in law of contracting and being contracted with; shall be, and are hereby, invested with all the powers, privileges, immunities, and franchises, and of acquiring by purchase or otherwise; and of holding and conveying real and personal estate, which may be needful to carry into effect fully the purposes and objects of this act.

SEC. 2. That the incorporators specifically named in the preceding section shall meet in the city of New York, at the room of the Cham-

ber of Commerce, in the Merchants' Exchange, on the next first Tuesday in the month succeeding that in which this act shall be passed; which said time of meeting shall be not less than thirty days, nor more than sixty days, after the passage of said act. And it shall be the duty of said corporators, at their first meeting, to determine whether or not they accept the charter; and if the same be accepted, to give notice immediately of such acceptance to the governor of the Territory of Minnesota, by certificate to that effect, signed by the corporators present, but not under seal, properly addressed, and deposited in the post office in the city of New York. It shall also be the duty of the corporators, at their first meeting, to make such arrangements as may be proper and necessary for the future meetings, for the organization of the company, and the issue of capital stock.

SEC. 3. It shall be the duty of the above-named corporators, within sixty days after the acceptance of this charter, to cause to be opened, at some designated place in the city of New York, and in the city of St. Paul, in this Territory, books for subscription to so much of the capital stock of said company as they may deem proper, giving twenty days' notice thereof in one or more public newspapers printed in the city of New York, and in the city of St. Paul, aforesaid; and after a sum not less than one million of dollars of capital stock of said company shall have been subscribed, and an instalment of not less than ten per cent. paid upon each share, then the subscribers shall become corporators of said company, and shall, within thirty days thereafter, proceed to elect a board of directors, which shall consist of not less than twelve stockholders, citizens of the United States of America, and three of them shall reside in the Territory or future State of Minnesota; and said directors so elected shall, within ten days thereafter, proceed to organize by the election of a president, and such other officers as they may see fit to appoint, and, until such organization, the corporate powers of said company shall remain in, and be exercised by, the corporators hereinbefore specified.

SEC. 4. From and after the organization of the said board of directors, all the corporate powers of said company shall be vested in and controlled and exercised by said board of directors and such officers and agents as they shall appoint, three of whom shall hold the office of directors for one year, three others for two years, three others for three years, and the remaining three for four years; the time which each of the first board of directors shall hold his term of office to be determined by lot within thirty days after the first organization of said board. At the expiration of the term of one year from the organization of said board, and every succeeding year thereafter, there shall be chosen three directors from among the stockholders of said company, due notice of such election having been first given by the board of directors, to supply the vacancies of those who go out, and each director shall continue in office until his successor is elected and assumes the trust conferred on him. Vacancies in the board may be filled by a vote of two-thirds of the directors remaining, such appointees to continue in office until the next regular election of directors; but no person shall be so elected who shall not have been openly nominated at a meeting of the directors at least one week before the time appointed

for such election. Other officers, agents, and servants, whether members of the board or otherwise, shall be entirely subject to the control of the board. In every election of directors, or for any other purpose, each share of capital stock shall be entitled to one vote, to be given in person or by proxy. A majority of the board of directors shall constitute a quorum for the transaction of business.

SEC. 5. The said directors shall have the power to make, ordain, and establish all such by-laws, rules, and regulations, as may be deemed expedient and necessary to fulfil the purposes and carry into effect the provisions of this act, and for the well-ordering, regulating, and securing the affairs and business of the company; and such by-laws, rules, and regulations, shall have the force and effect of law: *Provided*, That the same be not repugnant to the constitution and laws of the United States, or repugnant to the laws of the Territory or future State of Minnesota, or to this act. The board of directors shall have power to establish such rates of toll for the conveyance of persons and property upon the railroad, by this act authorized to be built, as they shall from time to time, by their resolutions, direct and determine, and to levy and collect the same for the use of the said company; the transportation of persons and property, the width of track, the construction of wheels, the form and size of cars, the weight of loads, and all other matters and things respecting the use of said road, and the conveyance of passengers and property, shall be exclusively within the control of said board of directors, and in conformity to such rules and regulations as they shall from time to time determine. Said board of directors may have power to hold its meetings in the city of New York, and to order and hold all elections for directors in said city.

SEC. 6. The capital stock of said corporation shall be ten millions of dollars, which may be increased from time to time to any sum not exceeding the entire amount expended on account of said road, divided into shares of one hundred dollars each, which shall be deemed personal property, and may be issued and transferred in such manner and at such places as may be ordered and provided by the board of directors, who shall have power to require the payment of sums subscribed by stockholders, in such manner and on such terms as they may deem proper; and on refusal or neglect on part of the stockholders, or any of them, to make payments on the requisition of the board of directors, the shares of such delinquent may, after thirty days' public notice, be sold at public auction, under such rules as the said board of directors may adopt; the surplus money, if any remains after deducting the payments due, with the interests and necessary costs of sale, to be paid to such delinquent stockholders. Books for subscription to stock shall be opened by the board of directors in the city of New York and in the city of St. Paul, and may be opened in the city of London, from time to time, as said board may order.

SEC. 7. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain, and operate as a railroad, with one or more tracks or lines of rails, from a point on the northwest shore of Lake Superior, in Minnesota Territory, north of the St. Louis river, opposite the entrance of Left-hand river into

Lake Superior, and near the mouth of the St. Louis river, Minnesota, on Lake Superior, by way of St. Anthony and St. Paul, in Minnesota, and cross the Mississippi at St. Paul, to such point on the northern boundary line of the State of Iowa as the board of directors may designate, which point shall be selected with reference to the best route to the city of Dubuque: *Provided*, That such location shall conform in all respects to such route as may be designated in any act of Congress granting lands for the construction of said railroad.

SEC. 8. The said corporation shall have the right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, by paying therefor in the manner hereinafter provided, land not exceeding two hundred feet in width through its entire length, and may enter upon and take possession of and use, all and singular, said lands, two hundred feet in width, and all streams, minerals, and materials of every kind thereon, for the location of depots and stopping-stations, for the purpose of constructing bridges, dams, embankments, excavations, station-grounds, spoil-banks, turnouts, engine-houses, shops, and other buildings necessary for the construction, completing, altering, maintaining, preserving, and complete operation of said road. All such lands, waters, minerals, materials, and privileges belonging, or which may hereafter belong, to the Territory or future State of Minnesota, on and within said two hundred feet in width, are hereby granted to said corporation for said purposes, and for no other; and for the purpose of aiding the said company in the construction and maintaining the said railroad, it is further enacted, that any lands that may be granted to the said Territory, to aid in the construction of the said railroad, shall be, and the same are hereby, granted in fee simple, absolute, without any further act or deed; and the governor of this Territory or future State of Minnesota is hereby authorized and directed, in the name and on behalf of said Territory or State, after the said grant of land shall have been made by the United States to said Territory, to execute and deliver to said company such further deed or assurance of the transfer of said property as said company may require to vest in them a perfect title to the same: *Provided, however*, That such lands shall be taken upon such terms and conditions as may be prescribed by the act of Congress granting the same: *Provided, also*, That whenever the net earnings of said road shall exceed twenty per cent. on the amount of capital actually expended by said company in the construction and furnishing said road and appurtenances, the said corporation shall pay, semi-annually, to the treasurer of the Territory or future State of Minnesota, and take his receipt for the same, seven per cent. of the said net earnings of said railroad.

SEC. 9. Said company may take such lands for the construction of said road as may be deemed requisite by said corporation; but, unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid, proper compensation for the lands so taken shall be made, which shall be ascertained and determined in the manner following: The said party or parties interested may present to the circuit, or district, or county court of the circuit, or district, or county, where said lands or real estate proposed to be taken shall lie, a peti-

tion, signed by its attorney or agent, describing. With convenient accuracy and certainty, by map or otherwise, the lands or real estate so required to be taken as aforesaid, setting forth the name and residence of each owner, or other person interested therein as owner, lessee, incumbrancer, as far as known to such attorney or agent, or appearing of record, and praying the appointment of commissioners to ascertain the compensation to be made such owners and others interested for the taking or injuriously affecting such land or real estate as aforesaid. The court shall have satisfactory evidence that notice of an intended application, and the time and place thereof, for the appointment of commissioners of appraisement between said corporation and the owners and persons interested in such lands and real estate, had been given at least ten days previously to such owners personally, or to their agent or attorney, at their residence, or on the premises, or by publication thereof for four weeks previous to such application, in a newspaper printed in the county in which said lands or real estate may be; or, if no newspaper be printed in said county, in a newspaper printed at the capital of this Territory, and also in a newspaper published at the shortest distance within said Territory or State from the place where the said land lies; such publication to be allowed only in respect to owners who shall appear by affidavit to have no residence in the county known to such agent or attorney whereat such notice could be delivered as aforesaid. The court may adjourn the proceedings from time to time; it may direct any future notice thereof to be given that may seem proper; it shall take proofs and allegations of all parties interested touching the regularity of the proceedings, and shall, by an entry in its minutes, appoint three competent and disinterested persons, who shall be freeholders of said county, commissioners, to ascertain such compensation as aforesaid, specifying in such entry a time and place for the first meeting of such commissioners. The said commissioners, before entering upon the duties of their office, shall take the oath required by the laws of this Territory, or the future State of Minnesota, and any one of them may administer oaths to witnesses produced before them, and may adjourn from time to time. Whenever they shall meet to hear proofs and allegations, unless by appointment of the court or pursuant to adjournment, they shall cause ten days' previous notice of such meeting to be given to the said owners or parties interested, or their attorney or agent, and may, each of them, issue subpoenas and compel witnesses to appear and testify; they shall hear the proofs and allegations of the parties, and any three or more of them, after reviewing the premises, without fear or favor, or partiality, ascertain and certify the compensation proper to be made to the said owners and parties interested, for the lands or real estate to be taken, as well as all damages accruing to the owner of the lands and real estate aforesaid, taken in consequence of the condemnation of the same, or injuriously affected as aforesaid; may, in their discretion, assess a separate reasonable sum in favor of such owner and parties interested, or of any person appointed by the court to appear as attorney for them, for costs, expenses, and reasonable counsel fees. They or a majority of them shall make, subscribe, and file with the clerk of the county in which such lands or real estate

shall lie, a certificate of their said ascertainment and assessment, in which such lands or real estate shall be described by map or otherwise, with convenient accuracy and certainty. The court, upon such certificate, and due proof that such compensation and separate sum, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the State treasury, or other place for that purpose, approved by the court, shall make and cause to be entered in its minutes a rule describing such lands or real estate, in manner aforesaid, such ascertainment or compensation, with the mode of making it, and such payment or deposit of same compensation as aforesaid, a certified copy of which rule shall be recorded and indexed in the proper recording office, in like manner and with the like effect, as if it were a deed of conveyance from the said owners and parties interested, to said corporation. Upon the entry of such rule, the said corporation shall become seized in fee of all lands and real estate described in said rule, as required to be taken as aforesaid, during the continuance of the corporation, by this or any subsequent act, and may take possession of, and hold, and use the same for the purposes of said road, and shall thereupon be discharged of all claims for any damages, by reason of any matter specified in said petition, certificate, or rule of said court. If, at any time, after an attempt or actual ascertainment or compensation, under this or any other act, or any purchase by, or donation to, said corporation of any lands for the purposes aforesaid, it shall appear that the title acquired thereby to all or any part of such lands, for the use of said road, or if the title of said corporation shall fail or be deemed defective, the said corporation may proceed anew to perfect such title, by procuring an ascertainment of the compensation proper to be made to any person or persons, whose title, claim or interest in, or lien upon, such land; and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such proceedings, or of any proceedings under this act, the court or officer to whom the application shall be made may, by a sale in that behalf made, authorize the said corporation if already in possession, and if not in possession, to take possession of and use such premises during the pendency, and until the final conclusion of such proceedings, and may stay all actions and proceedings against said corporation, on account thereof: *Provided*, Such corporation should pay a sufficient sum into court, or give security to be approved by said court, to pay the compensation in that behalf, when ascertained; and in every case where possession shall be authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said commissioners shall be entitled to receive from said corporation a compensation not exceeding five dollars for each day actually employed by them in the discharge of their duties; such compensation to be taxed and allowed by the court, and which shall be paid by such corporation. If any commissioners so appointed shall die, be unable or fail to serve, the court may appoint another in his place on reasonable notice of the application, to be approved by the court. The proceedings hereby authorized may be had in the district court of any county where the lands lie, and all motions to the district court shall

be made at a general or special term thereof, in said county. The said commissioners shall file the said certificate in the office of the clerk of the district court of the county where the lands to be affected may lie, and any clerk shall, when presented with an order from the court for that purpose, transfer a certified copy of the same, and the proceedings connected therewith, to the clerk of any other county in which any portion of the lands to be affected may lie, whenever such clerk shall be so required by said corporation, its agent, or attorney.

SEC. 10. For the purpose of raising funds, from time to time, for the construction and completion of said road, and the purchase of iron and other materials to be used thereon, and for other purposes connected with the construction and completing of said road, said company may issue its bonds in such form, and for such amounts, and at such rates of interest, payable at such time and places as the said board of directors may, by their by-laws, direct. The payment of said bonds may be secured by a deed of trust, or mortgage, of the franchise, lands, road, and materials belonging to said company, or all or either of them: *Provided*, That the faith of the Territory or future State of Minnesota shall be in nowise pledged for the redemption of said bonds, and that no banking privileges are hereby granted to said company.

SEC. 11. If any person shall carelessly, wilfully, maliciously, or wantonly, delay or obstruct the passage of any carriage on said road, or shall place, or cause to be placed, any material thereon, or in any way trespass upon, spoil, injure, or destroy said road, or any part thereof, or anything belonging or pertaining thereto, or employed or used in connexion with their location, survey, construction, or management, all persons committing, or aiding and abetting in the commission of, such trespass or offence, shall forfeit and pay to said company treble such damages as shall be proved before any court of competent jurisdiction, and shall be imprisoned until the payment thereof, unless sooner discharged by due proceedings of law; and further, such offenders shall be liable to indictment in the county within whose jurisdiction the offence may be committed, and pay a fine of not less than thirty nor more than one thousand dollars, to the use of the people of the Territory and future State of Minnesota; or may be imprisoned in the penitentiary or jail, for a term not exceeding five years, in the discretion of the court before whom the same shall be tried.

SEC. 12. Said corporation may construct their said road over or across any stream of water, water-course, road, highway, railroad, or canal—not, however, in such manner as to interrupt or impede the navigation of any navigable stream or highways; and all roads, or railroads laid out subsequently to the completion of any part of the said railroad which may cross or intersect the same, shall be laid out and constructed at the point of intersection, in a manner that will do the least damage to said railroad. Whenever the track of said railroad shall cross a road or highway, such road or highway may be crossed at grades, or carried under or over said track, as may be found most expedient; and in case where an embankment or cutting shall make a change in the line of such road or highway desirable, with a

view to more easy ascent or descent, the said company may take such additional lands, for the construction of such road or highway, as may be deemed requisite by said corporation. Unless the lands so taken shall be purchased, or voluntarily given for the purposes aforesaid, compensation shall be ascertained in the manner in this act provided, and duly made by said corporation to the owners and persons interested in such lands; the same when so taken, or compensation made, to become a part of such intersecting road or highway, in such manner, and by such tenure, as the adjacent parts of the same highway may be held for highway purposes: *Provided*, That the present or any subsequent legislature of the Territory or future State of Minnesota may authorize any railroad or highway to cross or intersect the said railroad, on such terms as will do the least damage to said Railroad Company.

SEC. 13. Every conductor, baggage-master, engineer, brakeman, or other servant of such corporation, employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, initial letters or style of the corporation. No conductor or collector, without such badge, shall demand or be entitled to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office; and no other of said officers or servants, without such badge, shall have any authority to meddle or interfere with any passenger, his baggage, or property.

SEC. 14. A bell of at least thirty pounds weight, or a steam-whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where said road shall cross any other road, and be kept ringing or whistling at intervals until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation, one-half thereof to go to the informer, and the other half to the Territory or future State of Minnesota, and to be liable for all damages which shall be sustained by any person by reason of such neglect. Said corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained, across each public road or street where the same is crossed by the railroad, on such elevation as not to obstruct the travel, and to be easily seen by the travellers; and on each side of said board shall be printed, in capital letters of at least the size of nine inches each, the words, "*Railroad crossing. Look out for the cars.*" But this provision shall not apply to streets of cities or villages, unless the corporation be required to put up such boards by the officers having charge of such streets. Said company shall construct and maintain a good substantial board or rail fence, five and one-half feet high, along said railroad, in the line of the lands by this act granted them, and shall construct and maintain cattle guards, wherever the same may be necessary, sufficient to keep cattle, sheep, horses, and hogs from off the track of said railroad, and shall be liable for all damage sustained by any person by reason of any neglect to keep and maintain such fence and cattle guard in good repair.

SEC. 15. Said corporation shall, within a reasonable time after said road shall have been permanently located, cause to be made a map

and profile thereof, and of the lands taken and obtained for the use of said road, and file the same in the office of the secretary of the Territory or the future State of Minnesota, and also a like map of the parts thereof located in the different counties through which the same may pass, and cause the same to be recorded in the office for recording deeds in the county in which said parts of said road shall lie, and also where any re-location of said line or lines may have been made as hereinbefore authorized; then a like map, or the profile thereof, shall be made and filed in the manner and places aforesaid.

SEC. 16. This act, and all grants herein contained, shall be void, unless said company shall render to the governor of this Territory, on or before the first day of January of each and every year, a statement in writing, verified by the oath of the president and treasurer of said Railroad Company, exhibiting the amount of capital actually expended by said company in the construction of said road, and the machinery thereof and appurtenances thereunto belonging, and the amount of their receipts and their expenditure during the year; and unless said board of directors shall be organized on or before the first day of July, 1854; and unless said company shall construct and complete at least fifty miles of the track of said main road, from the point on Lake Superior designated in this act as the starting point of said road, within three years after the acceptance of this charter as provided in this act, and the whole of the said main road within three years thereafter, and the whole of the track of said main road shall be laid with a rail not less than sixty pounds per yard, and the engines and rolling stock of the road shall be made in all respects equal to those on the best description of road in the United States; and unless said company shall construct, complete, and maintain, and keep in operation, a line of telegraph from Dubuque to St. Paul, upon the route of said road, within twenty months after the formation of the first board of directors under this act.

SEC. 17. All acts or parts of acts that in any manner conflict with this act, or the rights and franchises hereby granted, are hereby repealed: *Provided*, Said company accept this charter in manner and form as provided in section 2: *And provided also*, That nothing herein contained shall be so construed as to repeal, or in anywise vitiate, any charter for the construction of any bridge across the Mississippi river: *And provided further*, That the passage of this act shall not vitiate or render void any railroad charter heretofore granted by the legislative assembly of this Territory.

SEC. 18. This act shall be deemed a public act, and shall be in force from and after its passage.

SEC. 19. In case the persons incorporated by this act shall fail or neglect to accept the provisions of the same, and comply with its conditions within the time and in the manner herein prescribed, the same may be accepted by any other company which shall be approved by the governor, auditor, and treasurer of this Territory, who, upon complying with the terms and conditions of this act, shall be vested with all rights, powers, and immunities conferred upon the corporations herein named, and shall be subject to all the liabilities in the

said act set forth, in as full, ample, and complete a manner as if their names were inserted as corporators in this act.

N. C. D. TAYLOR,
Speaker of the House of Representatives.
S. B. OMSTEAD,
President of the Council.

Approved March 4, 1854.

W. A. GORMAN.

Which act has not been repealed nor modified; but, at the time of the said alleged trespasses, and each of them, was, and now is, in full force.

That after the passage and approval of the said act as aforesaid, and on the first Tuesday in the month of April, eighteen hundred and fifty-four, being the month next succeeding that in which the said act above mentioned was passed, and not less than thirty nor more than sixty days after such passage, the corporators named in the first section of the said act met in the city of New York, at the room of the Chamber of Commerce, in the Merchants' Exchange, being the first meeting of the said corporators, and then and there determined that they would, and they then did, accept the said charter, and immediately and upon the same day gave notice of such acceptance to the then governor of the Territory of Minnesota, by certificate to that effect, signed by the corporators present at the said meeting, but not under seal, properly addressed to "His Excellency Willis A. Gorman, governor of the Territory of Minnesota," at St. Paul, Minnesota, where the said governor then resided, and deposited upon the same day in the post office in the city of New York; and that, at the same first meeting, the said corporators made such arrangements as were proper and necessary for the future meetings for the organization of the said company and the issue of capital stock—that is to say, the said corporators then and there appointed a committee, consisting of three of their number, to wit: Alexander Ramsey, George W. Billings, and Curtis B. Raymond, and authorized and empowered the said committee to open books for subscription to one million dollars of the capital stock of the said company, to be opened at the office of Borup & Oakes, in the city of St. Paul, and at the Bank of the Republic in the city of New York, on the first day of May, eighteen hundred and fifty-four, and to receive such subscriptions, and an instalment of ten per cent. upon each share, and gave twenty days' notice thereof in two public newspapers printed in the city of New York, and in the said city of St. Paul; and at the same time further authorized and empowered the said committee to call future meetings of the said corporators, and the persons who should become subscribers to the capital stock of the said company.

That on the said first day of May, eighteen hundred and fifty-four, books of subscription to the capital stock of the said company were, on the said first day of May, eighteen hundred and fifty-four, opened by and under the direction of the said committee at the office of Borup & Oakes, in the city of St. Paul, and at the Bank of the Republic, in the city of New York.

That after the opening of the said book as aforesaid, and on or about the twentieth day of May, eighteen hundred and fifty-four, subscriptions were duly made upon the said books at St. Paul to the amount of two hundred dollars; and twenty dollars, being ten per cent. of the amount of the said subscriptions, was, at the time of the making thereof, duly paid by the said subscribers to the said committee.

That afterwards, and on the twenty-ninth day of June, eighteen hundred and fifty-four, an act was passed by the Congress of the United States, and duly approved by the President thereof, and became and was, and now is, a law, in the following words—that is to say:

AN ACT to aid the Territory of Minnesota in the construction of a railroad therein.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be, and is hereby, granted to the Territory of Minnesota, for the purpose of aiding in the construction of a railroad from the southern line of said Territory, commencing at a point between township ranges nine and seventeen; thence by the way of St. Paul, by the most practicable route, to the eastern line of said Territory, in the direction of Lake Superior, every alternate section of land, designated by odd numbers, for six sections in width on each side of said road within said Territory; but in case it shall appear that the United States have, when the line of said road is definitely fixed by the authority aforesaid, sold any section, or any part thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said Territory, subject to the approval of the Secretary of the Interior, to select from the lands of the United States, nearest to the tier of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached as aforesaid; which land (thus selected in lieu of those sold, and to which pre-emption has attached as aforesaid, together with the sections or parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid,) shall be held by the Territory of Minnesota for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the road in each case, and selected for and on account of said road: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses; and the same shall be applied to no other purpose whatever: *And provided further*, That any and all lands heretofore reserved to the United States by an act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such

reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grants shall remain to the United States within six miles on each side of said road, shall not be sold for less than double the minimum price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said Territory shall be subject to the disposal of any legislature thereof for the purpose aforesaid, and no other; nor shall they inure to the benefit of any company heretofore constituted and organized; and the said railroad shall be and remain a public highway for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States, nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale at the increased price.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said Territory shall be disposed of by said Territory only in the manner following—that is to say, no title shall vest in the said Territory of Minnesota, nor shall any patent issue for any part of the lands hereinbefore mentioned, until a continuous length of twenty miles of said road shall be completed through the lands hereby granted; and when the Secretary of the Interior shall be satisfied that any twenty miles of said road are completed, then a patent shall issue for a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of said road; and so from time to time patents shall be issued in like manner upon the completion of each additional twenty miles of said road until it shall be completed; and if said road is not completed within ten years, no further sale shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported at all times on said railroad, under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same.

Approved June 29, 1854.

That after the passage of the act last above mentioned, and on the thirtieth day of June, eighteen hundred and fifty-four, subscriptions to the capital stock of the said Railroad Company were duly made upon the said books which had been opened in the city of New York as aforesaid, to the amount of one million dollars, and an instalment of ten per cent. upon each share of the stock so subscribed was, at the time of the making of such subscription, duly paid by the persons making the same to the said committee.

That after the said subscriptions had been made and the said instalments had been paid as aforesaid, and on the first day of July, 1854, all the persons who had subscribed to the capital stock of the said company upon the book so opened in the city of New York, met together

in the said city, in pursuance of notice previously given by the said committee, and proceeded to and did duly elect twelve of the stockholders of the said Railroad Company, who were then citizens of the United States of America, and three of whom then resided in the said Territory of Minnesota, to be the directors of the said company; and that immediately thereafter, and upon the same first day of July, 1854, the said directors, so elected, proceeded to, and did organize by the election of a president and other officers, and then and there duly elected a president, vice president, secretary, treasurer, and counsellor of the said company; and that within ten days thereafter, each and all the said officers so elected duly accepted their said several offices, and respectively entered upon the discharge of the duties thereof.

That afterwards, and on the tenth day of October, eighteen hundred and fifty-four, these defendants caused a survey to be made of the route of the said railroad contemplated by and mentioned in the said act of the legislature of the Territory of Minnesota, and located such railroad upon a route commencing at a point upon the southern line of the said Territory between ranges nine and seventeen, designated by the board of directors of the said company with reference to the best route to the city of Dubuque, thence running to and crossing the Mississippi river at St. Paul, and thence by the most practicable route, and by the way of St. Anthony, to the eastern line of the said Territory in the direction of Lake Superior, and thence to a point on the northwest shore of Lake Superior, in Minnesota Territory, north of the St. Louis river, opposite the entrance of Lefthand river, into Lake Superior, and near the mouth of the St. Louis river, Minnesota, on Lake Superior, being the same railroad route contemplated by and mentioned in the said acts of Congress and of said Territorial legislature, and so located the same that such location conformed and conforms, in all respects, to the route designated by the said act of Congress, and by the said act of the Territorial legislature; that such location is so made between St. Paul and the southern line of said Territory; that the said railroad is located upon, over, and across, and includes, the land upon which the alleged trespasses mentioned in the complaint in this action are therein stated to have been committed; the said land being a portion of one of the sections granted to the Territory of Minnesota in and by said act of Congress.

That after such survey and location were made as aforesaid, and on the 12th day of October, eighteen hundred and fifty-four, and at divers other times between that day and the day of the commencement of this action, the defendants, by and with their necessary agents, officers, and servants, did go upon that part of the tract of land mentioned and described in the complaint in this action, upon and over which the said railroad was and is located as aforesaid, and upon no other part of the said land, for the purpose of constructing the said railroad, as the said defendants lawfully might do, and then and there, within the proper and necessary width of the tract of the said railroad, as they had the lawful right to do, did cut down and prostrate the trees in the complaint in this action mentioned, and carefully removed the same from the said track, doing no unnecessary

damage to the plaintiff, such cutting down, prostration, and removal being incident and necessary to the construction of the said railroad there, and that such cutting down, prostrating, and removing, and no other, are the several supposed trespasses in the complaint mentioned.

RICE, HOLLINSHEAD & BECKER,
Attorneys for Defendants.

Territory of Minnesota—District court, first district, Goodhue county.

The UNITED STATES OF AMERICA	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD	
COMPANY.	

The reply of the plaintiffs to the answer of the defendants in this action, respectfully shows to this court:

That, after the directors and officers of said company were elected, and entered upon the discharge of their duties, as mentioned in the said answer, and before the said trespasses or any of them were committed, to wit: on the fourth day of August, in the year 1854, an act was passed by the Congress of the United States, and approved by the President thereof, in the following words, to wit:

AN ACT for the relief of Thomas Bronaugh, and for the repeal of the "Act to aid the Territory of Minnesota in the construction of a railroad therein," approved the twenty-ninth day of June, eighteen hundred and fifty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby directed to increase the pension of Thomas Bronaugh, who is now on the rolls at four dollars, to the rate of eight dollars per month, to commence January first, eighteen hundred and fifty-four.

SEC. 2. *And be it further enacted,* That the bill entitled "An act to aid the Territory of Minnesota in the construction of a railroad therein," which passed the House of Representatives on the twentieth day of June, eighteen hundred and fifty-four, and which was approved by the President of the United States on the twenty-ninth day of June, eighteen hundred and fifty-four, be, and the same is hereby, repealed.

Approved August 4, 1854.

JOHN E. WARREN,
United States District Attorney.

Territory of Minnesota—District court, first district, Goodhue county.

The UNITED STATES OF AMERICA	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD	
COMPANY.	

The defendants demur to the reply of the plaintiffs in this action,

and say, that the matters therein alleged are not sufficient to entitle the plaintiff to maintain this action against the defendants, because they say that the act of Congress mentioned and set forth in said reply is void and of no effect, so far as it relates to the repeal of the act of Congress approved June 29, 1854, mentioned and set forth in the answer of the defendants.

RICE, HOLLINSHEAD & BECKER,
Attorneys for Defendants.

Territory of Minnesota—The district court, first judicial district, Goodhue county.

The UNITED STATES OF AMERICA	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD	
COMPANY.	

This cause having been argued by Mr. Wilkinson and Mr. Rice, of counsel for the defendants, in support of the demurrer to the plaintiff's reply in this action, and by Mr. Brisbin, of counsel for the plaintiff, in opposition thereto, and due deliberation being had by the court—

It is ordered that said demurrer be, and the same is hereby allowed, and that judgment be entered for the defendants herein.

Dated November 4, 1854.

W. H. WELCH,
Chief Justice.

Territory of Minnesota—The district court, first judicial district, county of Goodhue.

The UNITED STATES OF AMERICA	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD	
COMPANY.	

This cause having been tried by the court, the Hon. William H. Welch, Chief Justice of the Supreme Court and judge of the said district court, presiding, on the issue of law joined by the demurrer of the defendants, and the decision in writing of the said chief justice, &c., in favor of the said defendants, and allowing such demurrer, having been filed—

Now, on motion of Rice, Hollinshead & Becker, attorneys for said defendants, it is adjudged that the United States of America, the plaintiff, take nothing by this action, and that the Minnesota and Northwestern Railroad Company, the defendants, go thereof without day.

Dated November 9, 1854.

P. SANFORD, *Clerk.*

Territory of Minnesota—The district court for the first judicial district, Goodhue county.

The UNITED STATES OF AMERICA	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD	
COMPANY.	

Take notice that the plaintiff appeals to the Supreme Court of the Territory of Minnesota, from the judgment entered in this action in the district court for the first judicial district, and county of Goodhue, on the 9th day of November, 1854, in favor of the defendants and against the plaintiff, to the effect that the plaintiff take nothing by said action, and that the defendants go thereof without day; and also from the order made in said action allowing the demurrer to the plaintiff's reply, and directing judgment to be entered for the defendants in this action, bearing date the 4th day of November, 1854, and entered on the day first aforesaid.

Dated St. Paul, November 20, 1854.

J. E. WARREN,
Attorney for Plaintiff.

To RICE, HOLLINSHEAD & BECKER, *Defendants' Attorneys*;
And to P. SANFORD, *Clerk of said district court.*

And the plaintiff, by his counsel, made and submitted the following points, to wit:

SUPREME COURT.

The UNITED STATES OF AMERICA	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD	
COMPANY.	

First. No title to the lands granted by Congress by the act of June 29, 1854, vested in the Territory of Minnesota, or could vest.

Second. The defendants acquired no rights under the act of incorporation and the act of Congress.

Third. No rights having vested, Congress could resume the grant, and the repealing act was valid and effectual.

And thereupon the defendants, by their counsel, assigned the following points, to wit:

First. By the act of Congress approved June 29, 1854, granting certain lands to the Territory of Minnesota, to aid said Territory in constructing a railroad, the Territory *eo instanti*, upon the passage of the act, acquired an interest and property in the lands granted, which the Territory could grant and convey.

Second. By the act of the legislature of Minnesota, approved March 4, 1854, incorporating the "Minnesota and Northwestern Railroad Company," the said company acquired an interest and

property in all the land subsequently granted by Congress to the Territory for the purposes of the road; which interest became vested in said company immediately upon the passage of the act of Congress and the organization of the company.

Third. The second section of the act of Congress, passed August 4, 1854, repealing the first-mentioned act of Congress, is repugnant to the constitution of the United States, and also to great and fundamental principles which have been recognised as binding, from time immemorial, wherever the common law prevails.

And the same was argued by counsel.

Whereupon, the court adjourned until to-morrow, at 12 o'clock noon.

THURSDAY, *December 7, 1854.*

Court met pursuant to adjournment.

Court adjourned until to-morrow morning, at 9 o'clock.

FRIDAY, *December 8, 1854.*

Court met pursuant to adjournment.

The UNITED STATES OF AMERICA, appellants,	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD	
COMPANY, appellees.	

This day again came the parties, by their attorneys; and mature deliberation having been had upon the matters at issue in this cause, and herein assigned for error, and to this court appealed from, it appears to the court here that, in giving the judgment and order aforesaid, in the district court aforesaid, there is no error; therefore it is considered that the order and judgment thereon aforesaid, in form aforesaid, be in all things affirmed.

GEORGE W. PRESCOTT,
Clerk of the Supreme Court.

SUPREME COURT OF THE UNITED STATES,
for the Territory of Minnesota, ss.

I, George W. Prescott, clerk of said court, do hereby certify that the foregoing is a true transcript of the record, proceedings, and judgment of said court, in the cause therein entitled "the United States of America, appellants, against the Minnesota and Northwestern Railroad Company, appellees," as appears by the records and files of said court in my office.

In testimony whereof, I have hereunto set my hand and affixed
[L. s.] the seal of said Supreme Court, this 9th day of December,
A. D. 1854.

GEORGE W. PRESCOTT,
Clerk of the Supreme Court.

Instructions of the Solicitor of the Treasury to district attorneys, clerks of courts, marshals, and collectors of customs of the United States.

TREASURY DEPARTMENT,
Solicitor's Office, December 10, 1852.

Pursuant to the act of Congress passed May 29, 1830, the following regulations have been adopted in this office, with the approbation of the Secretary of the Treasury, for the observance of district attorneys, clerks, marshals, and collectors of the United States.

DISTRICT ATTORNEYS.

1. On taking the oath of office, district attorneys will immediately advise the Solicitor of the Treasury to that effect. They will, at the earliest practicable period, obtain from their respective predecessors in office the books, papers, and other property of the United States in their hands.

2. Unless already furnished with them, district attorneys will each procure a well bound docket and letter-book, properly labelled and marked, inside and outside, "the property of the United States," with suitable indexes; for which they will be allowed on the settlement of their accounts. These books will be carefully preserved and handed to the successors of such officers. They will make full and minute entries in these dockets of the time of issuing and receiving papers and process, and of whatsoever is done by them in United States cases of all kinds, with correct dates. The letter-books will contain full and true copies of all letters written by them officially, relating to suits, or to matters in which the United States are interested.

3. All official letters relating to United States cases, received by district attorneys, will be preserved as public property and delivered to their successors. Whenever such letters accumulate sufficiently to make a volume, the officer having them in possession will cause the same to be bound according to their dates; and the expense thereof will be allowed in his accounts. When a letter received is on paper of such size or form as not to admit of being bound conveniently with the volume, a copy should be made for that purpose. All papers and documents used by, or coming to the possession of, any district attorney, during the progress of a suit, and relating thereto, shall be properly filed and kept in a bundle with the other papers relating to the cause, and delivered by him to his successor.

4. No district attorney will commence or defend a suit or proceeding in court, in the name or for the benefit of the United States, without instructions from the Solicitor's office, or by direction from some person or court authorized by law so to direct; except in extraordinary cases, where the remedy or lien of the United States would, in the opinion of the district attorney, be lost or endangered by delay; and, in such case, he will immediately communicate to the Solicitor of the Treasury what he has done, with his reasons therefor.

5. Whenever a district attorney shall receive from a public officer, or shall in any other manner become possessed of, information which shall

lead him to believe that a trespass upon the property of the United States, or an infraction of their revenue or other laws, has been committed, he will immediately report such information to the Solicitor, with an opinion as to the propriety of prosecuting the offender; or if, in his opinion, the remedy of the United States would be lost or endangered by delay, he will, in case he shall consider it proper to do so, immediately commence a suit and report the same to the Solicitor, with his reasons for such proceeding.

6. On the receipt of papers directing, or on which to commence suit, the district attorney will closely examine and see if there is any defect in them, or explanation wanted; and, if so, he will immediately report the same to the Solicitor, or other person from whom received, with such suggestions as shall seem to him proper. If, before the commencement or during the progress of a cause, questions shall arise in the mind of the district attorney, in relation to which it may, in his opinion, be desirable that he should take counsel, he will state such questions to the Solicitor, with his views, and the authorities upon which he relies, or which occasion his doubts.

7. The commencement of all suits must be reported by district attorneys immediately after process shall be issued, and, at the end of every term of the district and circuit courts, they will make a general report to the office of the Solicitor, containing a list of all suits commenced by them since the close of the last preceding term of such court, with a full statement of the cause of the action and all the proceedings therein; also, containing a statement of all proceedings since the close of the last preceding term in causes previously commenced, so as to furnish to the Solicitor a full history of what has been done in all causes since the previous term, including any trial, verdict, decision or judgment, the issuing of any execution, and time when issued. Blank forms for reports under this rule will be furnished from the Solicitor's office.

8. When a suit shall have been commenced, either by direction of a public officer or otherwise, it will be the duty of the district attorney, having such suit in charge, to press the same to a judgment at as early a day as possible, consistent with the interests of the United States.

Where a cause shall have been continued by order of the court, the district attorney will, in his next return to the Solicitor's office, state upon whose motion and on what grounds the continuance was directed. No district attorney will discontinue a suit, or consent to a dismissal or continuance thereof, or suspend proceedings, or agree that a judgment or decree shall be taken for a less amount than is claimed by the United States, without express instructions from the Solicitor, unless such attorney shall be of opinion that the suit has been improperly brought, that an error has been committed in the pleadings or proceedings which may be fatal or hazardous to the interests of the government, or that the evidence in his power to produce is insufficient to support the action, and there shall not be sufficient time to communicate with and receive instructions from the Solicitor of the Treasury; and, in all cases of such agreement, consent, discontinu-

ance, suspension, or dismissal, the district attorney will immediately report the facts and his reasons to the Solicitor.

9. As early as practicable, after the perfecting of judgment, execution will be placed in the hands of the marshal by the district attorney, who will take duplicate receipts therefor—one of which he will transmit to the Solicitor. At the commencement of every term of the court, the district attorney will carefully examine and ascertain whether the marshal has properly returned all process placed in his hands, the return of which is due. If he shall find that the proper return has not been made, it will be his duty to take prompt and efficient measures to compel a return; in which case he will report the steps taken and their result to the Solicitor.

10. District attorneys will not receive payment of any demand due the United States, except where specially directed by law, or by the Solicitor. If a defendant shall desire to make a payment previous to judgment, or at a time when the execution is not in the hands of the marshal, the proper course for him will be, to place the money in the hands of a depository of public moneys to the credit of the Treasurer of the United States; taking triplicate certificates therefor, stating particularly the name and nature of the suit. On the receipt of two of these certificates, the district attorney will cause the proper allowance to be made, and will transmit one of the certificates, with a special report upon the subject, to the office of the Solicitor, and retain the other.

11. All records of cases in error or on appeal to the Supreme Court, together with the points of both parties, the brief of the district attorney, the authorities cited by the opposing counsel, and the opinion of the judge, when it can be obtained, whether intended for the Attorney General, the clerk of the Supreme Court, or the Solicitor, must be enclosed to the Solicitor, where the proper disposition of the papers will be made. The district attorney will examine and see that the papers in cases in error and on appeal are correct copies, and are in due form of law.

12. In case of any change of the fee bills or rules of court in either of the districts, the proper district attorney is requested to advise the Solicitor of such alteration.

13. After process is placed in the hands of a marshal, district attorneys will not attempt to control or interfere with the execution of the same, as therein commanded, without special directions from the Solicitor.

14. District attorneys will, at the end of each quarter of the calendar year, and at as early a day after the close of every quarter as possible, make out all their bills of costs in all suits or proceedings then ended, except in prize and criminal cases. Unless in urgent and special cases, bills of costs should not be forwarded for payment except at the expiration of the quarter. The character of each suit or proceeding in which costs are made must also be particularly mentioned. District attorneys must also add thereto their own affidavit, stating that all the services charged for have been actually performed, and that the disbursements charged have been actually paid or incurred; that no part of such bill has been paid; and that the charges are au-

thorized and chargeable by a law of the United States, or by the law of the State where the services were performed; or procure the certificate of a judge of the court to that effect. In States where there are no fee bills, the same affidavit of having performed the services charged, and of the non-payment, must be made, and the value of the services certified by the judge. Their bills must also be accompanied by the certificate of the clerk, "that the services have been rendered, and that the charges therefor were legal and proper." (Act of May 18, 1842, c. 29, and of June 17, 1844.) Services rendered in post office cases will be charged in a separate account.

Bills of costs will not, however, be paid unless the semi-annual accounts of fees, &c., required by the act of May 18, 1842, (made perpetual by the act of 17th June, 1844,) are regularly made.

15. As all district attorneys, except two, have salaries to compensate them for various miscellaneous services, for which there are no statute fees, such services should not be charged for unless the charge is specially authorized by the order directing the service.

CLERKS OF COURTS.

1. Upon taking the oath of office, and filing their official bonds, clerks of the different courts of the United States are requested immediately to advise the Solicitor by letter to that effect.

2. All official letters relating to United States cases, received by clerks, not needed by them as vouchers for the payment of money, will be preserved as public property, and delivered to their successors. Where the originals are essential to them as vouchers, they will leave copies in their places. Whenever such letters accumulate sufficient to make a volume, the officer having them in possession will cause the same to be bound according to their dates, and the expense thereof will be allowed in his accounts.

3. The clerks of the various courts will give notice in writing to the district attorney of the proper district of all acts of trespass and breaches of the revenue or other laws, whereby pecuniary penalties in favor of the United States have been incurred by the wrong-doers, which shall come to the knowledge of such clerks, or of which they shall be credibly informed, stating the particular act, with the time when committed, and the names and residence of the witnesses, if known; and will immediately forward to the office of the Solicitor a copy of such notice.

4. When a suit is commenced in behalf of the United States in any district or circuit court, the clerk of such court will promptly report the fact to the Solicitor, stating the time of commencement, the character of the action, and the parties thereto. Blank forms for returns under this regulation will be furnished from the Solicitor's office.

5. Within thirty days after the adjournment of each successive term of the district and circuit courts, the respective clerks will forward to the Solicitor a list of all judgments and decrees entered in said courts, respectively, since the close of the term next preceding the one so adjourned, to which the United States are parties, or in which they are interested, showing the amount adjudged or decreed for or against the

United States, specifying separately the amount of debt or damages and costs; showing, also, in each case, whether execution has been issued, the time when issued, and whether it has been returned; and if returned, setting forth the time when returned, and the substance of the return. Blank forms for returns under this regulation will be furnished from the Solicitor's office.

6. All moneys received by clerks of courts, from whatever source, for the use of the United States, (except as hereafter particularly specified,) must be paid over by them to a United States depository, treasurer, or assistant treasurer, as soon as practicable after being received, and without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. (This course is pointed out by the act of 3d March, 1849, c. 110.)

7. In revenue cases, where moneys collected by the marshal from fines, penalties, and forfeitures have been paid into court, and a part of which belongs to some person in the character of an informer, the clerk will deduct from the amount so received "the charges allowed by the court," and pay over the balance to the collector, as required by the 90th section of the act of 2d March, 1799, chap. 22. Of the amount thus paid over to the collector the clerk will take triplicate receipts, specifying on what account such moneys are paid, one of which will be transmitted to the Solicitor of the Treasury, one to the proper auditing officer, and the third retained by the clerk.

8. Upon paying over to a depository, treasurer, or assistant treasurer, any moneys which have been received for the use of the United States, the clerk will take triplicate receipts therefor, specifying that such moneys have been deposited to the credit of the United States, and on what account they were deposited.

MARSHALS.

1. On taking the oath of office and filing their official bonds, all marshals will immediately advise the Solicitor by letter to that effect. They will each, at the earliest practicable period, obtain from their respective predecessors in office the books and other property of the United States in their hands.

2. Unless already furnished with them, marshals will each procure a well bound docket, day-book, ledger, and letter-book, properly labeled and marked, inside and outside, "The property of the United States," with suitable indexes, for which they will be allowed on the settlement of their accounts. These books will be carefully preserved by the marshals, and handed to their successors. They will make minute entries in their dockets of the time of receiving and serving papers and process, and of whatever is done by them in United States cases of all kinds, with correct dates. The letter-books will contain full and true copies of all letters written by such officers officially, relating to suits or matters in which the United States are interested. In the day-books and ledgers, full and accurate accounts will be kept of all moneys received and paid out on account of the United States.

The entries in the dockets and account books will be so full, clear, and definite, that they can be easily understood.

3. All official letters relating to United States cases, received by marshals, not needed by them as vouchers for the payment of money, will be preserved as public property, and delivered to their successors. Where the originals are essential to them as vouchers, they will leave copies in their places. Whenever such letters accumulate sufficiently to make a volume, the officer having them in possession will cause the same to be bound according to their dates, and the expense thereof will be allowed in his accounts. When any letter received is on paper of such size or form that it cannot be conveniently bound in the volume, a copy should be made for that purpose.

4. On the receipt of every process in United States cases, (except subpoenas,) marshals will advise the Solicitor thereof by letter, stating the title and nature of the suit, the name of the process, and if an execution, distress warrant, or other writ requiring the collection of money, or the sale or seizure of property, the amount of the debt or description of the property to be sold or seized, and the amount of the costs, with the time from which they are directed to collect interest. They will also give to the district attorney duplicate receipts, expressing the above particulars.

5. Where a marshal in a United States case makes a seizure or a levy, he will report to the Solicitor a full description of the property seized or levied upon, in whose possession found, where and how kept, by whom and upon what terms, and how long it will be necessary to keep it. If at the time of sale no one bids to the amount of the execution, or *one-half of the cash value of the property* offered, he will postpone the sale and give notice to the Solicitor; except in cases where by such postponement the lien would be lost. In the latter case, if he shall deem it necessary to save the debt, he will consider the United States as bidding such amount, not greater than one-half the cash value of the property, as he shall deem proper for their interests. Should the United States become the purchaser of the property, the marshal will take care of the same, and will make immediate report of his doings in relation thereto to the Solicitor.

6. When real estate shall be purchased at a marshal's sale by or for the United States, the marshal will immediately transmit to the office of the Solicitor his certificate of sale, according to the law and usages in his State; and, when the purchaser shall be entitled thereto, such marshal shall execute his deed for the property to the United States, and cause the same to be placed on record, and immediately thereafter he will transmit such deed to the Solicitor. If the real estate sold is redeemed, he will immediately notify the Solicitor of the fact.

On the return of process, marshals will report in writing to the district attorney, and also to the Solicitor, what they have done on each. In cases where the marshal returns, in substance, "no property to be found," he will also specially report to the Solicitor and district attorney the situation, residence, and circumstances of the party against whom the process was issued, and whether the debtor has any means within or out of the State which can be reached by the United States, or whether the debt is valueless.

7. On receiving money in United States cases, marshals will immediately report the same to the district attorney and to the Solicitor, fully

and particularly, stating when, from whom, and on what account the same was received by them.

8. All moneys collected by marshals upon any process in favor of the United States, (except as specified in the following instructions,) must be paid over by them to a United States depository, treasurer, or assistant treasurer, as soon as practicable after the receipt by them of the same; and without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claims of any description whatsoever, except the cost and expenses of collecting the execution.

This course is expressly required by section 1st of the act of Congress passed March 3, 1849.

9. In cases where fines, penalties, and forfeitures are incurred under the revenue laws, and where the property seized is sold by the marshal, or the fine or penalty collected by him, and where a portion of the money so collected belongs to any person or persons in the character of informer or informers, the marshal is directed and required to deduct from the amount so received "the charges of sale, and pay the balance to the clerk or other proper officer of the court directing the sale," as required by the 90th section of the act of 2d March, 1799.

10. On the first day of March in each year, marshals will report to the Solicitor the situation of all judgment debtors of the United States within their respective districts, so far as they have any knowledge upon the subject, and will advise such proceedings in the premises as they shall deem proper.

11. Marshals will give notice in writing to the district attorney of the proper district of all acts of trespasses and breaches of the revenue or other laws, whereby pecuniary penalties in favor of the United States have been incurred by the wrong-doers, which shall come to the knowledge of such officer, or of which he shall be credibly informed, stating the particular act, with the time when committed, and the names of the witnesses, if known, and will immediately forward to the office of the Solicitor a copy of such notice.

12. The bills of marshals will be prepared at the end of each quarter of the calendar year, and at as early a day after the expiration of the quarter as possible. Costs for particular terms of the courts, or for particular cases, should not be forwarded during the quarter for adjustment, except under very urgent or special circumstances, but should be included in the quarterly account. Marshals will particularly state the places from and to which they charge for travelling, and the distance travelled. The nature of each particular suit in which costs are made must also be specified, and particularly whether they are connected with the Post Office Department. In no case will a receipt for money be given or taken when payment is not actually made. Marshals' bills should contain such items as are specified in the 4th section of the act of 8th May, 1792, chapter 36, (1 Statutes at Large, 276,) and must have been examined and certified by the court, or one of the judges of it, in which the service shall have been rendered. They must also be accompanied by a certificate of the clerk "that the services have been rendered, and that the charges therefor are legal and

proper," (act 18th May, 1842, and of June 17, 1844,) and be sworn to in the same manner as bills of attorneys.

Bills of post office cases must be prepared separately and distinctly from those of other character.

Bills of costs will not, however, be paid, unless the semi-annual account of fees, &c., required by the act of 18th May, 1842, (made perpetual by act of 17th June, 1844,) are regularly transmitted to the Secretary of the Interior. In all cases, except post office cases, bills of costs will be sent directly to the First Auditor of the Treasury.

In post office cases they should be sent to the Auditor of the Post Office Department.

13. As all marshals but six have salaries to compensate them for various miscellaneous services for which there are no statute fees, when other compensation is intended to be given for such services, it will be specially stated in the order directing the service.

14. Money necessary to defray the expenses of courts will be advanced to the marshal on his requisition, specifying in detail his estimate for the money which may be wanted, according to the form in the appendix. When thus prepared, such requisitions will be sent to the Secretary of the Interior, who is authorized to issue warrants thereon.

15. All levies by marshals, where it is practicable to do so, will be stored and kept in the United States warehouse or warehouses, used and occupied under the warehouse law by the officers of the government.

COLLECTORS OF THE CUSTOMS.

1. Upon taking the oath of office, and filing their official bonds, all collectors will immediately inform the Solicitor by letter to that effect.

2. When a collector, or other authorized officer of the customs, directs the commencement of a suit for any cause, he will do so in writing, addressed to the proper district attorney. If it is for a fine, penalty, or forfeiture, he will communicate all the facts which he expects to be able to prove, and the names and residence of the witnesses by whom such facts can be shown, and the name of the informer, if any. He will state distinctly what law he believes has been violated, and the amount of the penalty claimed. In cases of seizure, he will state what property has been seized, and for what offence; and how, and upon what terms, the property so seized is kept. A copy of such direction and communication, the person ordering the suit will immediately send to the Solicitor.

3. Collectors and other officers employed in the collection of the revenue will give notice in writing to the district attorney of the proper district of all acts of trespass and breaches of the revenue, or other laws, whereby pecuniary penalties in favor of the United States have been incurred by the wrong-doers, which shall come to the knowledge of such officers, or of which they shall be credibly informed; stating the particular act, with the time when committed, and the names and

residence of the witnesses, if known; and will immediately forward to the office of the Solicitor a copy of such notice.

4. Where small seizures by collectors shall be appraised at less than one hundred dollars, district attorneys will not proceed against them; but collectors will sell such articles in the manner the law requires.

5. All seizures by collectors, where it is practicable to do so, will be stored and kept in the United States warehouses or warehouse, used and occupied under the warehouse law by the officers of the government.

6. In cases of seizures for infractions of the revenue laws, where a portion of the fine, penalty, or forfeiture belongs to the collector, naval officer, surveyor, or any other person in the character of an informer, the collector, on receiving from the clerk of the court the net amount of the sums so recovered, will distribute, according to law, the part so belonging to any informer, and deposit the remainder with a United States depository, treasurer, or assistant treasurer, as soon as possible. He will take duplicate receipts from all persons claiming as informers, one of which will be transmitted to the Solicitor, and the other retained by the collector, and passed over, with other public papers, to his successors.

7. On paying over to a depository, treasurer, or assistant treasurer, moneys which have been received for the United States, collectors will take triplicate receipts therefor, stating that the same have been deposited by them to the credit of the Treasurer of the United States, and specifying on what account such moneys were received. One of these receipts will be immediately transmitted to the proper auditing officer, another to the Solicitor of the Treasury, and the third they will retain.

MISCELLANEOUS.

1. District attorneys, marshals, collectors, and clerks, will report to the Solicitor the existence and situation of any property belonging to the United States which is not in care of any officer or agent of the government, to the end that it may be protected and preserved. If either of them shall discover that any claim in favor of the government, not in his hands, can be collected, he will report to the Solicitor, and recommend the best mode of proceeding.

They will also report immediately to the Solicitor any default of a district attorney, clerk, marshal, collector, or other person engaged in the collection of any debt due the United States, or of the revenue, or in the disbursement of any money belonging to the government. All reports will be made in conformity to the forms furnished from the Solicitor's office. The new forms herewith furnished will be exclusively used.

2. The receipt of all communications from the Solicitor's office will be acknowledged by the first mail.

3. In all cases, when desired, triplicate receipts for money or papers received will be executed by the party receiving.

4. In all cases where receipts, notices, returns, or other papers, are

required to be sent to the Solicitor's office, they must be forwarded by the first mail.

5. Letters to the Solicitor's office will be on ordinary-sized letter paper, with a margin on all sides of an inch in width, so as to admit of binding. All letters will be enclosed in envelopes. Each distinct subject will be communicated in a separate letter under a separate envelope. Such letters should be endorsed on the back thus:

[Name of party writing.]

[Official designation of writer.]

[Date of letter.]

[Brief of contents.]

6. None of the foregoing instructions to district attorneys, marshals, clerks, and collectors are to be deemed to apply to indictments for crime, except in cases where a pecuniary fine or forfeiture may be imposed, which will belong to the United States.

GEO. F. COMSTOCK,
Solicitor of the Treasury.

Approved.

THO. CORWIN,
Secretary of the Treasury.

[From the St. Paul "Democrat," December 4.]

Territory of Minnesota, county of Goodhue—District court, first judicial district.

The UNITED STATES OF AMERICA	}
<i>against</i>	
The MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.	

The "Minnesota Pioneer," of the 2d instant, contains some comments upon my conduct in connexion with the above-entitled action.

As an individual, I have too much self-respect to be discomposed by attacks from such a quarter; and in my relations to the office of United States district attorney of the Territory of Minnesota, I am amenable to the power which controls that office, and not to the journalist of the "Pioneer."

The action against the Minnesota and Northwestern Railroad Company was at issue on the 23d day of October, 1854. On the 24th of October, 1854, obediently to instructions, I communicated to the department notice of the pendency of the action, accompanied with a

statement of the objects of the suit and the precise character of the issues raised. Nearly two months have since intervened, and the department has in no wise signified its disapproval of the course pursued by the district attorney.

These being facts, the suit shall proceed, if need be, to the highest courts of the land, with as much expedition as is compatible with the requisite preparation, because I deem it important that the question in discussion be settled at an early day.

The article alluded to couches a dashing onslaught upon the pleadings in the action, illustrating but little reverence in the editor for the venerable maxim of the Romans, that "a shoemaker should stick to his last."

That a trespass was actually committed at the time and place mentioned in the complaint, is a fact which can be demonstrated; that the defendants fulfilled the preliminary requisites as set forth in the answer, is a matter of public notoriety; and the record has not been embarrassed by allegations which are *known* to be susceptible of *proof*.

The burden of the great grief, however, which oppresses the *young man who belongs to the "Pioneer,"* exists in the facts that the organization of the company was illegal, inasmuch as "its charter requiring thirty days' notice of its intended organization, only one day's notice was given," and that the "fraudulent acts of the defendants or their agents in procuring the alteration of the act of Congress of June 29, 1854," nowhere appear from the pleadings.

I have failed to discover a provision in the act of March 4, 1854, requiring thirty days' notice of the intended organization of the company. There is no such provision. Admitting, however, such to be the fact, the sagacity and legal acumen of Mr. Earle S. Goodrich should find relief in the very pleadings which he condemns. The act of March 4, 1854, is pleaded at length in the answer; and the other fatal fact, that only one day's notice of the intended organization was given, also appears from the same pleading.

The demurrer must fail if the defendants have committed the first fault in pleading.

In relation to the other grounds of complaint I assert, and solicit contradiction from any respectable lawyer, that the fraudulent acts of the company, &c., could not properly be made the subject of an issue in the present action. The Minnesota and Northwestern Railroad Company are strangers to the act of Congress of June 29, 1854. The grant of lands thereby conveyed inures to the Territory of Minnesota. It is not pretended that the Territory was privy to the alteration of the bill, and will not be insisted that the rights of an innocent grantee can be injuriously affected by the acts of mere strangers and collaterals.

One of two things is apparent from the article of the "*Pioneer*," viz: that its author has taken a very superficial view of the pleadings, or that he is profoundly incapable of determining what issues are actually made, and what are proper to be made, in the present controversy.

What is here said is for the purpose of enlightening the people of the "*Pioneer*," and not in self-vindication. Mr. Goodrich is, of course, not

responsible. The human necessity of "daily bread" furnishes his excess.

I do regret, however, that a gentleman of his sprightliness should be obliged by any necessity to become the sewer through which his masters may evacuate at once their ill-digested venom and their ignorance.

JOHN B. BRISBIN.

MR. WARREN AND THE RAILROAD CASE.

It is but an act of simple justice to Mr. Warren that the following statement of his, which we find in the "Democrat" of Wednesday, should have a general circulation through the press of the Territory. We therefore copy it.

To the Public—Defence.

OFFICE U. S. DISTRICT ATTORNEY,

December 12, 1854.

Having been arraigned of late before the august tribunal of my fellow-citizens, and charged with violation of the sacred trusts committed to my care, I feel that it would no longer be deemed either modest or proper to withhold a reply to the harsh insinuations which have recently been made against me as an officer of the government of the United States.

I have been charged with malfeasance in office. This charge is based upon the nature of the pleadings which were submitted, in the prosecution lately instituted on the part of the United States against the "Minnesota and Northwestern Railroad Company." These pleadings have been presumed *intentionally* deficient; and it has, moreover, very significantly been intimated that the whole case is one made up for the express purpose of benefiting the above-mentioned company. Now, if upon the most rigid examination, which is herewith challenged, the charges of the "Pioneer" and "Times" be not sustained, or, on the contrary, demonstrated to be without reasonable foundation, the courteous editors of those organs will undoubtedly retract so much from the comments they have already made as may bear injuriously against the personal integrity of the district attorney.

I solemnly declare, that in commencing the suit which has given rise to such various animadversion, I had no other object in view than the attainment of complete justice and the consequent promotion of the public welfare. In doing so, the interests of the individual were entirely lost sight of in view of the responsibilities of the officer. It would ill become the office or myself to give way to the weakness of passion, or to make use of violent language, even against those who have endeavored to injure me. I have been unjustly assailed, but have the consciousness of upright motives to sustain me against the most malicious attack. The Railroad Company is a stranger to me; and I have not cringed to it, or to any other influence. Upon corporations and monopolies which conflict with the general welfare of the people,

no one has ever seen me smile. To oppression in every form I have ever been a foe! Dangerous powers have never found in me an advocate. Too little authority is safer than too much. Justice, however, is the most perfect security for all. Justice to our friends is well; but is not justice to our enemies and strangers a much nobler exemplification of humanity? This, the unprejudiced and thoughtful will not deny.

Under these impressions the railroad suit was instituted by the prosecution. Had personal considerations prevailed over the better convictions of judgment, it is quite certain that the suit, which has tended to place me in a position so extremely favorable for the assaults of enemies, would never have been undertaken. My worthy assistant has likewise been censured, although his conduct, thus far, deserves only commendation. It is true that he had the exclusive charge of the pleadings, though I am perfectly ready to endorse them, and take the entire responsibility upon myself. I see no fault or deficiency in them whatever. They were drawn on correct legal principles, and afford the Railroad Company no undue advantage, as has been maliciously supposed. The question of fraud is *now* immaterial. It has no bearing upon the main point in issue, and could not have been pleaded by us conscientiously, or with any regard to the salutary restrictions of justice, which the law has wisely imposed. In all the proceedings which have thus far been taken, the prosecution has considered only its duty to the government and the Territory; the "Railroad Company" has scarcely entered into its thoughts, save as being trespassers upon the lands which it was our duty to claim and secure for the United States. If wrong has been done to any one, it has been done in seeking the right.

In justice to myself, I would state to the "Pioneer" that the letter of Mr. Brisbin, which appeared in the "Democrat" of December 4, was not seen by me until after its publication. It was a private and not an official act, for which he alone is responsible. I was satisfied, before instituting the present suit, that Congress would make no more *grants of land* for railroad purposes. I do not believe it will. If, then, the "Railroad Company" has acted fraudulently, let the Railroad Company suffer. There is no justice in making the innocent suffer with the guilty. If Congress ratifies the decision of the supreme court of the Territory, (deciding that the repeal is void,) then arises the question, whether the lands granted belong to the *Territory or the Railroad Company*.

If there has been *fraud*, then the Territorial charter is nugatory, and the lands will still belong to Minnesota. I wish Minnesota to have the lands. If there be collusion or corruption in this, why, all I can say is, "*make the most of it.*"

Such are my honest views of this case. I may be mistaken, but am sincere. As for myself, I only ask for *justice*—that my conduct and character may be impartially scrutinized, before a charge of corruption be founded against a public officer to whom office is not desirable, except so far as it may afford him opportunities of discharging the debt of gratitude which he bears in his heart towards the citizens of Minnesota.

JOHN ESAIAS WARREN.

ATTORNEY GENERAL'S OFFICE,
December 30, 1854.

SIR: I am directed by the President to say, that he has learned with surprise that you, as attorney of the United States for the Territory of Minnesota, have presumed, without any orders whatever, to commence a suit in that Territory, in the name of the United States, against the Minnesota and Northwestern Railroad Company; that you have prosecuted this suit through the district court and the supreme court for the Territory, to the point of final judgment in the latter, without giving due notice of the same to any superior authority of the government; and that, when the action was at length decided against the United States, and you had entered an appeal for them, you did not transmit the appeal-papers to the law-offices of the United States here, and that the earliest knowledge which either the Attorney General or the Solicitor had of the case, was by notice to the former of its having been docketed in the Supreme Court of the United States by the attorney of the appellees.

These acts or omissions on your part are in direct violation of the explicit standing instructions to all attorneys of the United States, and without such instructions are manifestly contrary to the general duty of any attorney.

The President will not, until he has further information on the subject, undertake to judge the motives of your conduct in this matter; it being sufficient for the present purpose to determine that, in view of ascertained facts, he cannot suffer the legal interests of the United States in the Territory of Minnesota longer to continue in your charge. You will, therefore, consider your official service as terminated on the receipt of this communication, and be prepared to deliver the papers, and other public property in your hands, to such successor as the President shall, with advice and consent of the Senate, see fit to nominate and appoint.

Your obedient servant,
C. CUSHING.

JOHN E. WARREN, Esq.,
Attorney of U. S. for Territory of Minnesota.

DEPARTMENT OF THE INTERIOR,
Washington, December 28, 1854.

SIR: I have the honor to inform you, in reply to your verbal inquiry, that shortly after the passage of the act of 4th August, 1854, repealing the act approved June 29, 1854, "to aid the Territory of Minnesota in the construction of a railroad therein," Mr. Barbour, of New York, called at the department, and, on behalf of the company, requested me to enter into some arrangement by which to test the validity of the repealing act, which I utterly refused; and that I have had nothing to do with the matter since, except to address a letter of inquiry to the United States district attorney for Minnesota and the Commissioner of the General Land Office. I send you a copy of my letter to the district

attorney of the 26th instant, and of the reply received from the Commissioner of the General Land Office, dated on yesterday.

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND.

Hon. C. CUSHING,
Attorney General.

DEPARTMENT OF THE INTERIOR,
Washington, December 26, 1854.

SIR: It has been reported that a suit has been instituted in the courts in Minnesota against the Railroad Company, involving the act of Congress approved June 29, 1854, which was repealed by that approved August 4, 1854.

I have to request that you will advise this department as soon as possible whether the rumor be true, and, if so, what the facts are; also, in what court the suit was brought, and under whose instructions or authority.

I am, very respectfully, your obedient servant,

R. McCLELLAND, *Secretary.*

U. S. ATTORNEY for the District of Minnesota,
St. Paul, Minnesota Territory.

GENERAL LAND OFFICE, *December 27, 1854.*

SIR: In reply to your inquiry of this morning, I have the honor to state that the estimate of the length of the railroad in Minnesota, for which a grant was made, and also repealed at the last session of Congress, is 222 miles. Six sections per mile would amount to 1,332 sections, or 852,480 acres. We have no official information of any kind relative to the suit alluded to.

Mr. Streeter, the Solicitor of the Treasury, was here this morning, and I caused an examination to be made at his instance; but could find neither statement, report, nor action, in relation to it.

I am, sir, with much respect, your obedient servant,

JOHN WILSON,
Commissioner.

Hon. R. McCLELLAND,
Secretary of the Interior.

OFFICE OF THE SOLICITOR OF THE TREASURY,
December 26, 1854.

SIR: I have the honor to inform you that information has reached me, unofficially and informally, that in October last a suit was brought in the district of Minnesota, in the name of the United States *vs.* the Minnesota and Northwestern Railroad Company, to recover damages

for cutting and carrying away trees from the public lands, &c.; that said suit has been recently tried before Chief Justice Welch, and decided against the United States; that an appeal to the Supreme Court of the United States was prayed, and the record made out and sent on to this city to be filed and docketed for hearing at the present term of the Supreme Court, and that said record is now in this city, in the hands of the counsel of the Railroad Company, for this purpose.

In relation to this matter I have only to say, that if the facts be true, as above stated, this suit was brought without the authority or knowledge of this office, and no information respecting it has ever been communicated to it by the district attorney or clerk of the court; and I have no knowledge respecting it, except the informal information above referred to.

In connexion with the above proceedings, I enclose you a printed copy of the general instructions to district attorneys, and beg to refer you to page 4, section 4, which forbids district attorneys from commencing or defending a suit, or proceeding in court, in the name of or for the benefit of the United States, without instructions from the Solicitor's office, or by direction from some person or court authorized by law so to direct, (same page, sections 5 and 6,) which direct district attorneys, when a case proper, in their judgment, for a suit is presented to them, to report the facts, with their opinion thereon, to the Solicitor, for his instructions; and to same page, section 7, which directs him to report forthwith to the Solicitor all suits which he may commence, &c.; also to page 6, section 11, which directs that all records of cases in error, or on an appeal to the Supreme Court, be enclosed to this office, with the brief of the district attorney, &c.

With great respect, your obedient servant,

F. B. STREETER.

HON. CALEB CUSHING,
Attorney General.